

one sense his heir apparent, but who it is urged is not his heir apparent in the sense of the Rutherford Act, because his right of succession is not indefeasible.

The statute defines heir apparent "as the heir who is next in succession to the heir in possession, and whose right of succession if he survive must take effect." His right of succession to what and to whom?

His right of succession is to the heir in possession. If he survives he must succeed to his father, the heir in possession.

It is an elliptical mode of expression to say that a person succeeds to a thing or to a place; what he succeeds to is to a person in the possession of the thing, and that being so, if you are the next person to the heir in possession you are the heir apparent.

The other view is that it is a right of succession to the entailed estate that is to take effect. If that be so, then the rules laid down in the case of *Preston Bruce* would undoubtedly apply.

Upon these grounds I am of opinion that the petitioner's eldest son is heir apparent in the sense of the Rutherford Act.

The Court adhered and remitted to the Lord Ordinary to grant the prayer of the petition.

Counsel for the Petitioner—Moncreiff—Low. Agents—Skene, Edwards, & Bilton, W.S.

Counsel for the Respondents—Mackay—Begg. Agents—W. & J. Burness, W.S.

Tuesday, June 26.

## SECOND DIVISION.

### CRICHTON AND OTHERS, PETITIONERS.

*Process—Arbitration—Diligence to Recover Documents.*

A petition was presented by one of the parties to an arbitration in which the Court was asked to appoint a commissioner to receive productions from havers, and to grant a warrant for the citation of havers to appear before the commissioner, and produce on oath the documents called for in the specification annexed to the petition. The Court refused the petition on the ground that as they had no knowledge of the facts of the case, the petitioners should first have had the specification approved of by the arbiters, and then, if necessary, applied to the Court.

On 13th January 1888 a submission under the Land Clauses Consolidation (Scotland) Act, 1845, was entered into between Miss Catherine Crichton and others, proprietors of certain subjects in Burntisland, and the North British Railway Company, as to the value of these subjects, which had been taken by the railway company.

Arbiters were appointed, who allowed a proof, and issued an order, which contained the following:—" . . . The arbiters respectfully recommend the Lords of Council and Session, and the Sheriffs of the Lothians and Peebles and county of Fife, to grant warrant for citing witnesses and havers on the application of the parties."

A petition was accordingly presented to the

Second Division of the Court of Session by Miss Crichton, to which was annexed a specification of the documents sought to be recovered.

The petitioners prayed the Court to "appoint a commissioner to receive all papers and productions from havers, and to grant warrant to messengers-at-arms and sheriff-officers for the citation of havers to appear and produce on oath the documents called for in the specification annexed hereto before the commissioner aforesaid, and that at such time and place as he may fix for that purpose; and also to grant warrant in ordinary form for the citation of havers and witnesses on behalf of the petitioners, to appear before the said arbiters within the board room of the directors of the said North British Railway Company on the 2nd day of July 1888, at half-past ten o'clock forenoon."

The petition was opposed by the respondents.

The Court, on the ground that they had no knowledge of the facts of the case, stated that the specification should first have been approved of by the arbiters, and that then, if necessary, the petitioners might have applied to the Court.

The following interlocutor was pronounced:—

"Grant warrant for the citation of witnesses at the instance of the petitioners before the arbiters named in the petition, within the board room of the directors of the North British Railway Company at Edinburgh, on the 2nd day of July 1888, at half-past ten o'clock forenoon, and at such other place or places, and at such other time or times, as the said arbiters shall appoint for the examination of witnesses: *Quoad ultra* refuse the prayer of the petition."

Counsel for the Petitioners—C. N. Johnston. Agent—Andrew Wallace, Solicitor.

Counsel for the Respondents—C. Thomson. Agents—Millar, Robson, & Innes, S.S.C.

Tuesday, June 26.

## SECOND DIVISION.

[Lord Lee, Ordinary.

THOM V. ANDREW.

*Process—Caution for Expenses—Bankrupt—Damages.*

Circumstances in which the tenant of a shop, an undischarged bankrupt, was held entitled, without finding caution, to bring an action of damages against his landlord for illegally entering the subjects let, and removing the pursuer's effects.

This was an action of damages at the instance of James Wallace Thom, a confectioner and medicated lozenge manufacturer in Aberdeen, against Francis Andrew, auctioneer and valuator there.

The pursuer averred—(Cond. 2) "By missive of lease dated 31st December 1887 the defender let to the pursuer the shop 47 Broad Street, Aberdeen, at a weekly rent of £2, for a period not to exceed three months, unless otherwise agreed upon between the parties; entry to be given on 31st December 1887." . . . (Cond. 3)